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SUBJECT: LEGAL ADVISER BELLINGER'S MEETING WITH BELGIAN
OFFICIALS

Classified By: POLCOUNS TED ANDREWS. REASONS 1.4 (B) AND (D).

11. (C) SUMMARY: Legal Adviser John Bellinger met with representatives of Belgium's Ministry of Justice and Foreign Ministry to discuss legal issues arising from the global fight against terrorism and ways to further transatlantic cooperation and partnership against terrorism. Bellinger reiterated U.S. commitment to rule of law, while noting the difficulties of applying traditional rules to non-state actors such as al Qaeda. He also briefed the Belgians on provisions of the 2006 Military Commissions Act. END SUMMARY.

12. (C) Legal Adviser John Bellinger and L/PM Assistant Legal Adviser Joshua Dorosin, accompanied by Embassy Charge' William Imbrie, ECONCouns Terri Robl, and poloff, met with representatives from Belgium's Ministry of Foreign Affairs (MFA) and Justice Ministry. MFA participants included Deputy Chief of Cabinet Walter Stevens, Director for International Organizations and Human Rights Issues France Chainaye, and representatives from the Legal Adviser's office. Diplomatic Adviser Serge Wauthier, Deputy Legal Adviser Erik Verbert, and Federal Magistrate Johan Delmulle represented the Justice Ministry.

13. (C) Stevens opened the meeting by referencing Belgian Foreign Minister De Gucht's October 30 letter to Secretary Rice, which expressed concern about provisions and implementation of the 2006 Military Commissions Act. In his letter, De Gucht questioned the Act's provisions on judicial recourse, and raised concerns about interrogation practices and the law's effect on the application of principles under the Geneva Conventions. Bellinger noted the legal framework for dealing with the armed conflict with al Qaeda is not so clear -- traditional legal categories do not fit a terrorist organization such as al Qaeda very well. While the U.S. respects and complies with the provisions of the Geneva Conventions, such traditional international rules were designed to apply to conflicts between states and do not always easily apply to non-state actors like al Qaeda. Stevens agreed the traditional "legal framework does not fit al Qaeda," although he was uncomfortable with saying existing laws were unclear. He wondered how the current framework of international law could be adjusted so that allies could "work commonly on a legal basis" to address terrorism.

14. (C) Bellinger indicated the United States is concerned about a divide between the U.S. and Europe fueled by a misconception in Europe -- perhaps media-driven -- that the U.S. is not complying with international law. It is neither

productive nor fair to say the U.S. is choosing to break the law; rather, the transatlantic partners should work together to ascertain and apply the appropriate legal framework in order to combat an enemy that does not fit traditional rules.

Bellinger stressed it is important that the United States and Europe not grow apart on this issue. Noting his meeting earlier that day with Anne-Marie Lizin, President of the Belgian Senate, Bellinger indicated that a growing number of Europeans appeared to recognize the Geneva Conventions may be difficult to apply to new realities and were questioning whether a "new Geneva Convention" was necessary. Bellinger thought it was premature to discuss a new multilateral convention, but reiterated that the lack of clarity created by rules meant to apply to conflict between states and not necessarily to non-state actors such as al Qaeda provided impetus for cooperation in determining the appropriate legal framework.

15. (C) Stevens argued that "terminology is important." While the old rules may no longer apply to certain situations, the United States and Europe are rule-based societies that must cope with new situations based on a solid legal foundation. "What are we doing to make sure we act on a legal basis" if the Geneva Conventions are not always applicable, Stevens asked. Bellinger responded that it is not fair to say that the United States is violating clear, legal norms. Legal experts differ on the interpretation and implementation of laws of war. Rather, it is imperative that allies work together to counter a global terrorist threat from groups that the legal system has not traditionally addressed.

16. (C) Stevens wondered what the main problems are in developing common approaches to fighting terrorists. For example, how are today's groups different from groups such as

the IRA? He noted that, in the case of the Madrid bombings, judiciaries in several countries acted on the basis of existing criminal laws, suggesting that use of a criminal justice paradigm was effective in that case. Assistant Legal Adviser Dorosin said there were two factors to consider in determining how to respond to terrorist attacks. First, it is important to recognize that every affected country approaches the issue within the context of its own international obligations and domestic authorities, and that this would mean countries seeking to cooperate with one another must realize that they may not always operate under the same legal requirements. For example, European states are generally parties to both the Additional Protocols to the Geneva Conventions and to the European Convention on Human Rights, two sets of obligations to which the U.S. is not bound. Second, it should be clear after the September 11 attacks that terrorists now have a global capacity for violence that may give rise in some cases to a legitimate right of self-defense, so that armed conflict with a non-state actor such as al Qaeda is now more likely to take place. Both of these factors support the U.S. view that it may be appropriate in some cases to respond to terrorist groups like al Qaeda militarily and under a law of war framework, and that European governments should not take the view that such a response was always legally unsupportable. Bellinger added the U.S. does not feel military action governed by the law of armed conflict is necessarily the only way to fight terrorism -- the U.S. wants to use all of its tools to combat terrorists. But domestic criminal laws cannot be routinely applied to actors such as al Qaeda, who operate training camps and attack U.S. interests outside the United States. In such cases, the laws of war are applicable. However, a clearer international consensus on what rules or tools to apply is necessary, and the U.S. wants to work with its allies to achieve that consensus.

17. (C) Bellinger turned to the 2006 Military Commissions Act, which he noted had been mischaracterized in both the U.S. and European press. He explained the military commissions were very similar to courts martial, with military judges and all the elements of a fair trial.

Dorosin said there was consideration under way regarding adding foreign consultants to an accused's defense team. He discussed other protective measures, including the combatant status review tribunal (CSRT) and CSRT review process.

¶18. (C) Stevens said Belgian FM DeGucht felt compelled to write to Secretary Rice in October to appease domestic concerns from the Belgian populace and parliamentarians. Stevens found Bellinger's explanation of the "fairness elements" for detention and trial of detainees helpful in this regard. Bellinger expressed appreciation for domestic political pressures, and noted the Military Commissions Act was more complex than conveyed in the media. He offered U.S. help in conveying accurate facts and information to Belgium and other governments to appease their domestic constituencies.

¶19. (C) Serge Wauthier asked about the use of coercive interrogation techniques to gain evidence or confessions. Bellinger said that evidence stemming from torture is excluded and he explained that a judge must determine what is coercive; there is no statutory ban on coercion. Coerced statements will not be admitted unless a judge determines the statement is reliable. Wauthier asked whether assurances would be provided to governments that defendants' legal rights would be respected. Bellinger said he understood the political pressures that European governments faced, but they should maintain calm about this subject. It was ridiculous to think the United States, with its longstanding judicial system, was disregarding the law. He said the U.S. Justice Department could provide some assurances regarding compliance with applicable laws, but the populace needed to be educated regarding actual provisions within the Military Commissions Act and the U.S. commitment to rules of law. Correcting European misconceptions was a priority for U.S. leaders and officials. Bellinger noted that the U.S. and Europe manage to engage effectively, for example, on extraditions despite differing views on the death penalty. The key was to avoid a U.S.-European divide on a global issue as vital as the war against terrorism.

¶10. (C) Stevens said the meeting had been very helpful and thanked Bellinger for offering to answer other questions in the future. He agreed with Charge' Imbrie that, in the

future, letters from the Minister were unnecessary, and that experts would engage on a working level. Bellinger assured the Belgians of U.S. desire to provide facts and information.

¶11. (C) The Belgians arrived with a number of tough questions on Military Commissions, but by the end of the meeting appeared to be fully satisfied with the complete and detailed presentation by Bellinger and Dorosin, as well as Bellinger's analysis that inaccurate reporting by European journalists had exacerbated European concerns about U.S. approaches to dealing with illegal combatants.

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